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UNCLAS SECTION 01 OF 05 ROME 000548

SIPDIS

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DEPT FOR EB/IPE CLACROSSE
DEPT PLS PASS TO USTR JCHOE-GROVES
DOC JBOGER
DOC PLS PASS TO USPTO JURBAN AND LOC STEPP

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SUBJECT: YEAR 2006 SPECIAL 301, MISSION ITALY INPUT

Refs: A) STATE 14937

B) 05 ROME 2776
C) 05 ROME 1900
D) ROME 328
E) 05 ROME 3881
F) 05 ROME 1534
G) 05 ROME 1569
H) 05 ROME 4046

Summary and Comment

1. Mission Italy recommends that Italy remain on the 301 Watch List for 2006. Although Italy deserves credit for reductions in piracy rates and improved police action in 2005, industry losses, particularly for software, are still unacceptably high. While some cities, such as Florence, have made significant progress in controlling illegal vendors of pirated and counterfeit products, many local officials are doing little to stop this brash street trade. Parliament last year enacted a new euro 10,000 (\$12,000) fine for the purchase of fake goods, but the fine is not often levied. A recent poll shows that twenty percent of consumers here admit to purchasing fakes. Though Mission outreach to Italian judges is paying dividends, Italy's court system continues to treat IPR crimes with leniency. That said, Italy is on course to come off the 301 list eventually. We hope that this year's 301 report will acknowledge improvements here, but still pull no punches in describing Italy's failure to maintain developed-world standards of IPR protection. End summary and comment.

Introduction

2. This message includes an overview of the IPR situation in Italy in 2005. Answers to additional questions raised in ref A, including training, begin in paragraph 19. Embassy acknowledges with thanks the contributions of Congens Florence, Milan, and Naples.

Italy Has Improved, But Should Stay on Watch List.

3. Piracy rates, as reported by member associations of the International Intellectual Property Alliance (IIPA), fell for most copyright sectors in 2005: music

piracy rates fell from 23 percent in 2004 to 20 percent in 2005; business software, from 50 to 48 percent; entertainment software, from 34 to 30 percent; and books, from 23 to 20 percent. The film industry was the only sector to report an increase in piracy rates in 2005, from 15 percent to 22 percent, though this reflects a new statistical methodology to measure Internet piracy more accurately. We believe, in general, the extent and scope of Internet piracy in Italy is little understood, either by industry associations or GOI authorities.

Piracy Still Too High, Especially for Software.

¶4. Despite improvements in 2005, Italy is still far behind other advanced, G-7 economies, particularly in the rate of software piracy. Business software piracy will continue to be a challenge here as Italy's economy is dominated by small and medium enterprises, which can more easily copy software without detection. With Italian SMEs struggling to stay afloat in a stagnant economy, the temptation to save money by illegally copying software will remain strong.

Financial Police Improve Enforcement...

¶5. The Guardia di Finanza (the "GdF," the Finance Ministry's national police force with jurisdiction over financial crime) continues to improve its enforcement efforts. According to GdF statistics, Italian financial police pursued roughly the same number of IPR cases in 2005 as they did in 2004, but with an increase in arrests, from 267 in 2004 to 323

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in 2005. Seizures of CDs, DVDs, and audio tapes by the GdF increased from 2.9 to 3.4 million pieces, while software confiscations increased from 38 thousand pieces in 2004 to 1.2 million pieces in 2005. (Note: All these 2005 GdF statistics cover only January-November, so final results for all of 2005 should be higher. End note.) We believe the GdF leadership is committed to reducing IPR crime, and we have observed the GdF growing ever more sensitive to the growing links between IPR piracy/counterfeiting and organized crime. GdF leaders have told us they are concentrating resources on stopping fakes at points of entry, rather than combating street-level trade, where local authorities have primary responsibility.

...But Commitment Uneven Among Local Officials.

¶6. The GdF's ability to turn the tide is limited, however, so long as IPR remains a low priority among some city leaders. A high-level GdF commander recently complained to Congen Naples that IPR seizures in the Campania region (the base of the Camorra crime family where most counterfeit goods and illegal optical media are produced and imported) represents a "drop in the ocean" and that Naples city police, who should be on the front lines, play only a marginal role. We believe Naples authorities are concerned that major crackdowns will lead to a public backlash, since large groups in the city, where unemployment is over twenty percent, depend on counterfeiting and piracy for their livelihoods. Another GdF regional commander told Congen Florence that many local officials in north-central Italy are not doing enough to change public attitudes and that some, while recognizing the damage caused by IPR crime, see the war as unwinnable.

The "China Threat" Sparks More Action on Trademarks.

¶7. Much of the increase in GOI enforcement actions in 2005 focused on trademarks and was a direct reaction to the growing threat posed by Chinese counterfeiting (ref B). Italian authorities are increasingly conducting raids in Chinese immigrant communities. In February 2006, GdF officers seized four million counterfeit items (toys, electrical appliances, and cosmetics) worth \$12 million in a warehouse in Prato (a suburb of Florence) owned by a Chinese businessman. In December 2005 in Milan, the GdF seized 25 million counterfeit items and filed charges against 35 Chinese immigrants. In southern Italy, Calabria and Campania Customs Director Roberta De Robertis announced that twenty million counterfeit toys, textiles, watches, and leather apparel arriving from China were seized in ¶2005.

GOI Creates New IPR Czar.

¶8. In 2005, the GOI created a new position of "High Commissioner for the Fight Against Counterfeiting" within the industry ministry (ref C). Roberto Cota, whom the GOI appointed to this post in October, has stated in the press that his priority will be trademark enforcement, namely protecting the "Made in Italy" label from foreign imitators. (Comment: While the creation of this post is a positive step and a sign of improving GOI commitment to IPR, we worry that this office may not have a sufficient budget or staff to have much impact. Previous GOI attempts to coordinate IPR enforcement better have met with mixed reviews. End comment.)

Street Vending Undiminished, Despite New Fine.

¶9. In May 2005, as part of the same legislative package that created the IPR High Commissioner, the Italian parliament enacted a euro 10,000 fine (\$12,000) for the purchase of counterfeit items. Just after passage of the new law, police issued fines (which they generally reduce by two-thirds to euro

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3,333) to a handful of tourists in Milan, Florence, and Rome. However, the measure is now largely ignored. One Rome street vendor of pirated music and film scoffed at the fine, and told Econoff that it had not made a dent in his business.

¶10. Indeed, over the past year, Econoff has observed no perceptible change in the near-ubiquitous street vending in Rome. Pirated music, film, and software, in addition to counterfeit designer merchandise, are still sold openly on Italian streets (almost always by illegal immigrants). A stubborn idea persists among many city-level officials that the trade in fake goods provides a livelihood to immigrants who would otherwise engage in more serious criminal activity. Congen Milan has observed street vendors shift away from optical media in favor of fake luxury goods, though contacts there believe this is due to the increasing popularity of Internet downloading. Similarly, Congen Naples sources report a decrease in optical disk vending in Palermo, also likely because of the growing popularity of Internet piracy.

¶11. Florence is the only major Italian city to make sustained headway against street vending thanks to a decision among local law enforcement officials to prioritize IPR crime. Both Florence and Milan conducted successful Christmas-time crackdowns on street vendors, although these actions targeted

trademark goods rather than optical disks.

Twenty Percent of Italians Admit Buying Fakes.

¶12. Italian consumers remain very blase in their attitudes toward IPR theft. An opinion poll released in November 2005, cosponsored by the GdF, revealed that twenty percent of Italian consumers admit to purchasing pirated/counterfeit items either often or sometimes. The majority of these transactions, 60 percent according to the poll, takes place at illegal street stalls. While the Prime Minister's office launched a national anti-piracy advertising campaign in 2005, such messages are overwhelmed by the much stronger message sent by the armies of street vendors the average Italian sees day-after-day.

Italy Is TRIPS Compliant On Paper...

¶13. While the continuing failure of Italian courts to adequately punish IPR crime (discussed below), coupled with costly and slow civil process, raises concerns about Italy's TRIPS compliance in practice, Italy's IPR legal regime is compliant with the TRIPS agreement.

...Though 2005 Legal Reforms Raises IPR Concerns.

¶14. In November 2005, Italy's Parliament passed a judicial reform law (the "ex-Cirielli" bill) to speed the notoriously slow pace of criminal trials by restricting the statute of limitations for most crimes (refs D,E). Industry groups believe the reform will exacerbate the existing problem of IPR defendants stalling criminal trials until the statue of limitation runs out and the case is dismissed. The GOI, however, strongly denies "ex-Cirielli" will negatively impact IPR prosecutions and claims that, by increasing penalties for repeat offenders, the reform actually creates a greater deterrent against career IPR thieves. It will be several years before the true effect of "ex-Cirielli" is fully understood.

Internet Piracy Law Weakened.

¶15. A second major legal change in 2005 was Parliament's revision of the "Urbani Law," Italy's Internet piracy statute enacted in 2004 (ref F). The original law outlined potential prison sentences for Internet piracy regardless of whether uploading was done for monetary gain. Under pressure from internet

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service providers, however, Paliament revised the Urbani Law to apply prison sentences only to commercial, for-profit on-line piracy. Sharing copyrighted works for free technically remains a criminal offense, but it no longer carries the threat of jail time and those caught can avoid a conviction by paying a fine.

Attempts to Streamline Civil Cases

¶16. Also in 2005, the GOI implemented new procedures designed to speed civil IPR cases. The new measures permit lawyers to conduct more preliminary case work in civil trials previously performed by (over-worked) judges. Even with this change, Italy desperately needs to streamline the civil court system more as rights holders find private lawsuits against infringers too costly and slow to be of much use.

The Judge: Often a Pirate's Best Friend

¶17. While industry associations and GOI officials credit Mission Italy's outreach efforts (particularly our annual IPR retreats for Italian judges, ref G) with improving awareness of IPR crime among the judiciary, as a whole Italian judges continue to treat IPR crime with frustrating leniency. According to IIPA statistics, the number of defendants who received jail time (rather than a suspended sentence) decreased slightly from 48 in 2004 to 44 in 2005. Two recent cases illustrate the difficulties we continue to face:

--In August 2005, a judge in Bolzano ruled that the sale of a counterfeit good does not constitute fraud because the low price makes it obvious to the consumer that the item is not real. Italian judges continue to occasionally raise this argument when acquitting counterfeiters, even though the argument negates the right of companies to control the use of their trademarks. The GOI has strongly denounced such decisions.

--A Rome judge in February 2005 declared a defendant not guilty of selling 125 pirated audio cassettes because, as an illegal immigrant with no way of working in the regular economy, the man had no other means with which to support himself. "Economic necessity" is another concept Italian judges still cite.

¶18. Although the judiciary continues to be the major obstacle to better enforcement, there is a significant and growing number of judges who "get it" on IPR, and who are educating their peers about the heavy involvement of organized crime. Furthermore, much of the problem with IPR enforcement here is closely tied to larger deficiencies in Italy's slow and overburdened criminal justice system.

Additional Responses to Ref A Questions

Optical Media Controls

¶19. The GOI's royalty collection agency, SIAE, encourages optical disk producers to use source identification codes, but this suggestion is not mandated by law. The music industry has lobbied (so far unsuccessfully) for inserting greater controls on optical media production equipment and inputs into Italy's Copyright Law.

Use and Procurement of Government Software

¶20. The GOI does not have formal regulations or codes-of-conduct, only guidelines, covering software procurement by government agencies. National government offices have, by and large, legalized their software, though the use of unlicensed software

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remains a problem in some regional or local-level governments.

Geographic Indicators, Folklore, Genetic Resources

¶21. Embassy is aware of no new legislation covering geographic indicators, folklore expression, or genetic resources.

Pharmaceuticals

¶22. Mission notes the concerns expressed by PhRMA with the GOI's use of spending ceilings to control drug prices. We will continue to urge the GOI to adopt more transparent, fair and equitable regulations, but we do not agree with PhRMA's suggestion that the USG place Italy on the Priority Watch List. Pharmaceutical patents are, overall, better protected in Italy than copyrights or trademarks. Italy's distribution system is well controlled, and we have not heard of cases of counterfeit pharmaceuticals in 2005. Nor have we heard complaints about inadequate protection of test data.

WIPO Treaties

¶23. Italy has signed, but not yet ratified, both the WIPO Copyright Treaty and the Performances and Phonograms Treaty. Embassy will continue to push for ratification, though given the April general elections and subsequent formation of a new government, we do not expect action in 2006.

Training

¶24. Italian law enforcement agencies are enthusiastic participants in USG-sponsored training programs, but a worsening budget situation limited their participation in Washington-based programs in 2005. Italy was unable to send a participant to USPTO's recent IPR Enforcement Academy due to funding shortfalls, though the Italian Patent office did send an official to the USPTO's Visiting Scholars program.

¶25. We see a special need for more training of Italian customs officials and the GdF on border/port interdiction and intelligence sharing. Similarly, the Italian Postal Police (who have jurisdiction over on-line crimes) would benefit from technical training programs and best-practices exchanges on Internet piracy. Given ongoing budget problems, such programs would need to take place in Italy to ensure adequate GOI participation.

¶26. Mission Italy will sponsor several training initiatives in 2006. The Embassy and Congen Florence hosted a conference in October 2005 for GOI officials on IPR public education techniques (ref H). The DOJ and USPTO participated in the Florence session, and we hope to host a follow-up meeting in 2006 or 2007. Embassy Rome's DHS/ICE attache will conduct an IPR training seminar for GdF officials in May 2006. The Embassy will host its fourth annual IPR retreat for Italian judges May 22-24 in Montecatini, Italy. ConGen Milan nominates officials from GdF or Postal Police every year for IPR-related State Department International Visitor Programs.

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